IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 1ST FEBRUARY 2007/12TH MAGHA 1928

OP.No. 20963 of 1999(U)

PETITIONER:

USMAN CHALIYADAN, JUNIOR HEALTH INSPECTOR,GRADE – II, MUNICIPAL OFFICE, MATTANNOOR.

BY ADV. SRI.T.RAVIKUMAR

RESPONDENTS:
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1. STATE OF KERALA REPRESENTED BY THE CHIEF SECRETARY,TRIVANDRUM.

2. THE PRINCIPAL SECRETARY, FINANCE DEPARTMENT, GOVERNEMTN OF KERALA, TRIVANDRUM.

3. THE DIRECTOR FO MUNICIPAL ADMINISTRATION, TRIVANDRUM.

BY GOVT.PLEALDER SRI. K.J.MOHEMMED ANZAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 1/2/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Even today, defects are not cured. Therefore, the original petition will stand dismissed for default.

21.7.2006 SD/ - PIUS C.KURIAKOSE, JUDGE

ORDER ON CMP NO.34652/1999 IN O.P. NO.20963/1999

DISMISSED

1.2.2007 SD/- PIUS C.KURIAKOSE, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE ORDER NO. A2.22897/86(2) DATED 4.11.1986

EXT.P2: COPY OF THE T.P.M. NO.EB3/130366/86/DHS DATED 7.10.89

EXT.P3: COPY OF THE PROCEEDINGS DATED 23.3.1991 ISSUED BY R3.

EXT.P4: COPY OF THE LETTER NO.LF (W) P1-580/96 DATED 8.1.1997.

EXT.P5: COPY OF THE PROCEDINGS DATED 2.5.97

EXT.P6: COPY of the PROCEEDINGS NO.LF (W) P1-91/97 DATED 9.9.1997.

EXT.P7; COPY OF THE LETTER NO.L.F.33337/M.L.2/96 DATED 12.2.1997.

EXT.P8: COPY OF TH PROCEEDINGS NO.53746/PRCA /98/FIN. DATED 19.11.98.

PIUS C.KURIAKOSE, J.

O.P.NO.20963 of 1999

Dated this 1st day of February , 2007

JUDGMENT

The issue which arises in this case is whether the provisional service which was rendered by the writ petitioner, who is presently working as Junior Health Inspector in Municipal common service in other departments prior to 1.10.1994, should be reckoned with for the purpose of grade promotions and increments. Ext.P1 dated 4.11.1986 is the appointment order by which the petitioner was provisionally appointed as a Junior Health Inspector in the Health service Department. Ext.P2 will show that the petitioner's period of provisional appointment was being extended from time to time and that the petitioner was continued till regular PSC hands joined for duty. Ext.P3 dated 12.3.1991 is the appointment order by which the petitioner was given regular appointment on the basis of advice by the PSC. The petitioner claims that he is entitled for reckoning the entire provisional service which he has rendered prior to his regular appointment under Ext.P3 for grade Promotions and

Increments. He refers to G.O.(P) No.459/86/Fin. Dated 1.7.1986 whereby it is ordered that provisional service on regularisation or followed by regular appointment with or without break in the same category will be treated as officiating service ab initio for the limited purpose of granting of increments. He points out that in G.O.(P) No.379/76/Fin. dated 14.12.1976 the Government has imposed three conditions. The 3rd condition is as follows:

"iii) The post should fall in the same service".

He submits that on the basis of the representation submitted by several Government Organization, the Government was pleased to issue G.O.(P) No.459/86/Fin. Dated 1.7.86 thereby delete the above reported condition No.3. Since the Condition No. 3 is deleted the only conditions which should be followed are condition Nos. 1 and 2 which are as follows;

i). The post should carry the same or identical scale of pay.

ii). The qualification and method of appointment should be same.

Both the above conditions are followed and satisfied in the petitioner's case and therefore he claims that there is no reason as to why provisional service rendered by him should not be

reckoned with. The petitioner refers to GO.(P) No. 1041/79 (142) Fin. dated 27.11.1979 and G.O.(P) No.517/88 (234) Fin. Dated 8.8.1988 of the Finance Department which were to the effect that provisional service will be reckoned as qualifying service for the purpose of Grade Promotion. He further refers to G.O. (P) No.540/94/Fin. dated 30.9.1994 by which the Government has deleted its decision in Rule 33 of KSR with effect from 1.10.1994. The prominent ground raised by the petitioner is that since the entirety of the provisional service rendered by him was prior to 1.10.1994 he is entitled to have the entire duration of his provisional service reckoned with for the purpose of Higher Grade and increments. Raising his claim he submitted representation seeking counting of his provisional service also for promotion. The Office of the Local Fund District Examiner, Wyanad considered that representation and issued Ext.P4 letter to the Secretary of the Secretary of the Kalpetta Municipality. Ext.P4 was forwarded by the Secretary of the Kalpetta Municipality to the Director of Municipalities. But the Directorate of Municipalities, by their proceedings dated 2.5.1997 rejected the claim of the petitioner on the reason that the provisional service rendered by the petitioner was in a

different department than the department into which the petitioner was regularly appointed. Ext.P5 is a copy of the proceedings of the Municipality in that regard. The petitioner contends that the reason contained in Ext.P5 perse, wrong in view of G.O.(P) No.459/86/Fin. dated 1.7.1986. The petitioner submits that the issue was taken up by the District Examiner, Wayanad of the Local Fund District Examiner's Office who by proceedings dated 9.9.1997 again clarified that provisional hands like the petitioner who were regularly appointed prior to 1.10.1994 can be granted the benefit of calculating the increments reckoning the provisional service also. Ext.P6 is relied on by the petitioner in this regard. Subsequently the Local Fund Audit Directorate, Trivandrum would refer to G.O.(P) No.459/86 and inform the Local Fund Audit Director, Wyand that the decision of the Municipality to grant increment to the petitioner by reckoning his provisional service is correct. Ext.P7 is the letter of the Local Fund Auditor to the District Examiner Wayanad. The grievance of the petitioner is that in spite of all this, the Government did not favourably consider his request for reckoning temporary service also for the purpose of granting increments and grade promotions. He submits that he

was not heard in the matter by the Government at all. He came across copy of the Government letter incorporating decision of the Government taken in the case of a similarly circumstanced employee of the Municipal service Department. Ext.P8 is the copy of that letter. In Ext.P8 what is stated is that the Government's decision No. 2 in Rule 33 of Part I of KSR will not apply to employees who get regularized in the Municipal common service through PSC selection.

2. The Petitioner's grievance is that the Government has not so far taken any decision on the recommendation in Exts.P7 and P8 to grant higher grades and increments to the petitioner reckoning his provisional service in the Health service Department.

3. I have heard the submissions of Sri. T.Ravikumar the learned counsel for the petitioner and Sri.K.J.Mohammed Anzar the learned Government Pleader for the respondents. It appears to me having regard to the Government Orders in G.O.(P) No.459/86/Fin. dated 17.1986, G.O.(P) No.540/94/Fin. dated 13.9.1994 and Government Circular No.3/95/(55) Fin. dated 1.3.1995 that the petitioner whose provisional service prior to 1.10.1994 was followed by appointment in regular service with

effect from 23.3.1991 has got a fairly strong case to have such provisional service reckoned with for the purpose of grade promotions and increments. I did not propose to decide the issue finally. The petitioner is permitted to submit a proper representation before the Government voicing his grievance incorporating a copy of this judgment and copies of the various G.O.(P)s relied on by the petitioner. If the respondents receives such a representation within one month of the petitioner receiving a copy of this judgment the Government will hear the petitioner and pass just and appropriate order on that representation in the light of the observations herein above within three months of the Government receiving the same.

The Original Petition is disposed of as above.

PIUS C.KURIAKOSE
Judge

dpk

PIUS C.KURIAKOSE, J

O.P. NO.20963/1999

JUDGMENT

1ST FEBRUARY 2007